




FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: The Commissioners
Staff Director
Deputy Staff Director
General Counsel

FROM: Office of the Commission Secretary 

DATE: December 8, 2000

SUBJECT: Statement of Reasons for MUR 4922

Attached is a copy of the Statement of Reasons for MUR 4922 signed
by Chairman Darryl R. Wold. This was received in the Commission
Secretary's Office on Thursday, December 7, 2000 at 3:38 p.m.

cc: Vincent J. Convery, Jr.
Press Office
Public Information
Public Disclosure

Attachment



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

OFFICE OF THE CHAIRMAN

In the Matter of

Suburban O'Hare Commission

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MUR 4922

STATEMENT OF REASONS

CHAIRMAN DARRYL R. WOLD

I voted not to pursue this matter in the exercise of the Commission's prosecutorial discretion. See *Heckler v. Chaney*, 470 U.S. 821 (1985).

The argument in favor of express advocacy appears to rely primarily on tying together the language from several locations in the mailer, so the reader would connect the messages advocating opposition to expansion of O'Hare airport, to the record of Congressman Hyde in opposition to expansion, to the explicit exhortation at the bottom of three of the four pages to "Vote on Nov. 3". That analysis, however, has to be put in the context of the rest of the mailer, which talked about a number of candidates, and included on the fourth page of the mailer a "comparison" box which highlighted the contrasting positions of opposing candidates for two other offices, governor and United States senator, but which did not include Congressman Hyde.

Based on these factors, I reached two conclusions concerning the question of whether the mailer expressly advocated a vote for Congressman Hyde, within the meaning of that term for purposes of the FECA: (1) The answer to the question is somewhat uncertain; and (2) The argument that the mailer constituted express advocacy rests on the application of paragraph (b) of § 100.22 of our Regulations, in that the mailer must be "taken as a whole" to find express advocacy, because it does not contain the explicit phrases of advocacy which paragraph (a) of § 100.22 requires. For these reasons I did not feel that we should proceed.

The uncertainty of the outcome has to be weighed against the value of devoting Commission resources to the prosecution of this matter. An additional factor in this equation, in my mind, is the importance of pursuing this particular possible violation. The facts that: 1) The source of the mailer was apparently a coalition of local governments primarily interested in airport expansion issues, and not the election of candidates to office; and 2) This mailer did not appear to have had a significant effect on

Congressman Hyde's reelection, because he was the overwhelming favorite in his race (that he indeed won by a substantial margin), make this mailer, and the possibility that it contained express advocacy, somewhat insignificant compared to other matters before the Commission. These factors together weighed heavily against proceeding.

The conclusion I reached that the existence of express advocacy rests on paragraph (b) of our regulation at § 100.22 is also a significant factor that weighs heavily against proceeding. The FEC is at present restrained from "enforcing" paragraph (b) against any party by the District Court's order in *Virginia Society for Human Life, Inc. v. FEC*, 83 F.Supp.2d 668 (E.D. Va. 2000). That decision has been appealed by the Commission, but at the present time the injunction is in effect. I believe that finding reason to believe could be considered by the court as a step in "enforcing" the regulation, and therefore a violation of the court's injunction. In that circumstance, prudence at least indicates that we not proceed in a case that has marginal significance, as this one does.

Darryl R. Wold
Darryl R. Wold, Chairman

12/7/00
Date